

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ARTHUR SPIRES,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Civil Action No. 07-224 Erie

MEMORANDUM OPINION

McLAUGHLIN, SEAN J., J.

Presently before the Court are the parties Cross-Motions for Summary Judgment, the Report and Recommendation of United States Magistrate Judge Susan Paradise Baxter and Plaintiff's Objections to the Report and Recommendation. For the reasons set forth below, Plaintiff's objections are overruled, the Magistrate Judge's Report and Recommendation is adopted, Defendant's Motion for Summary Judgment is granted and Plaintiff's Motion for Summary Judgment is denied.

I. PROCEDURAL HISTORY

Plaintiff, Arthur Spires, has appealed from the final decision of the Commissioner of Social Security Administration denying his claim for disability insurance benefits ("DIB") under Titles II of the Social Security Act, 42 U.S.C. § 401 *et seq.* Plaintiff originally filed an application on December 6, 2004 and his application was denied. Following a hearing before an administrative law judge ("ALJ"), the ALJ issued a written decision finding Plaintiff was not disabled during the relevant time period and denied his claim for benefits. The Appeals Council denied his request for review on June 29, 2007.

Plaintiff subsequently initiated a civil action in this Court on August 20, 2007 challenging the final decision of the Commissioner. We referred this case to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 12], filed on June 27,

2008, recommended that Plaintiff's Motion for Summary Judgment [Doc. No. 7] be denied and that Defendant's Motion for Summary Judgment [Doc. No. 9] be granted. The Magistrate Judge concluded that: (1) the ALJ appropriately determined that Plaintiff's depression was not a severe impairment; (2) because the ALJ found that Plaintiff had no limitations due to a mental impairment, the ALJ was not required to include such limitations in her hypothetical to the vocational expert; and (3) the ALJ did not err in failing to afford Plaintiff's assertions of pain greater weight due to his past work history. See Report and Recommendation [Doc. No. 12]. Plaintiff has timely filed Objections [Doc. No. 13] and this matter is now ripe for our review and determination.

II. STANDARD OF REVIEW

When a party makes a timely and specific objection to a portion of a report and recommendation by a United States Magistrate Judge, the district court is obliged to engage in *de novo* review of the issues raised on objection. 28 U.S.C. §636(b)(1); *see also Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3rd Cir. 1989). In so doing, the court may "accept, reject, or modify, in whole or in part, the findings and recommendations" contained in the report. 28 U.S.C. § 636(b)(1). The court may also, in the exercise of sound judicial discretion, rely on the Magistrate Judge's proposed findings and recommendations. *See United States v. Raddatz*, 447 U.S. 667, 676 (1980).

III. DISCUSSION

Having carefully reviewed the record *de novo*, we agree with the Magistrate Judge's conclusions in all respects. We write separately however, in order to further address Plaintiff's argument that the Magistrate Judge erred in overlooking the ALJ's failure to consider his "exemplary work history" as part of her credibility determination, citing this Court's recent decision in *Gates v. Commissioner*, No. 07-202 (W.D.Pa., filed April 14, 2008), as support for this argument. *See* Plaintiff's Objections p. 5. In *Gates*, this Court remanded the claimant's case to the ALJ for reconsideration of claimant's credibility because the ALJ failed to consider claimant's "long and productive work history" as part of the credibility calculus. In particular, we found compelling the fact that the claimant in *Gates* had worked continuously for seventeen years as a licensed practical nurse, and attempted to work part-time after his injury. *Gates* at *10.

See, e.g., Podeworney v. Harris, 745 F.2d 210, 217 (3rd Cir. 1984) (in which claimant’s testimony was afforded substantial weight due to his continuous, thirty-two-year employment as a crane operator with the same company); *Dobrowolsky v. Califano*, 606 F.2d 403, 409 (3rd Cir. 1979) (giving claimant’s testimony substantial credibility based on his “twenty-nine years of continuous work, fifteen with the same employer”); *Weber v. Massanari*, 156 F.Supp.2d 475, 486 (E.D.Pa. 2001) (remanding a case to the ALJ because the ALJ failed to consider the claimant’s employment at the same hardware store from May 1979 to December 1994 as part of the credibility determination); *Walker v. Sullivan*, 1991 WL 125172 at * 5 (E.D.Pa. 1991) (finding that ALJ should have given claimant’s testimony “far more deference” due to his continuous long work history of 13 years with the same pharmaceutical company, in addition to his return to work after injury).

Plaintiff’s work history in the present case, however, is clearly distinguishable from that of the claimants in the above cited cases. Prior to the administrative hearing, he had not been employed for over six years (AR 62; 280). Accordingly, we find no error in the ALJ’s failure to give substantial weight to Plaintiff’s work history in her assessment of Plaintiff’s credibility.

IV. CONCLUSION

An appropriate Order follows.

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ORDER

AND NOW, this 14th day of August, 2008; and for the reasons set forth in the accompanying Memorandum Opinion,

IT IS HEREBY ORDERED that Plaintiff's Objections to the Magistrate Judge's Report and Recommendation are OVERRULED;

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [Doc. No. 7] is DENIED and Defendant's Motion for Summary Judgment [Doc. No. 9] is GRANTED.

JUDGMENT is hereby entered in favor of Defendant, Michael J. Astrue, Commissioner of Social Security and against Plaintiff, Arthur Spires.

The Report and Recommendation [Doc. No. 12] of Magistrate Judge Baxter, filed on June 27, 2008, is adopted as the opinion of the Court.

The clerk is directed to mark the case closed.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge